
HOUSE BILL No. 1529

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Utility mergers and IURC enforcement authority. Includes in the value of a utility's property for ratemaking purposes the value of certain qualified property. Allows an energy utility to recover through a retail rate adjustment mechanism certain government mandated costs incurred in providing retail energy service. Allows a public utility providing electric or gas service to implement rates proposed by the utility in a petition for a change in its basic rates if the utility regulatory commission (IURC) fails to issue an order on the petition within nine months. Requires the utility to refund to customers any difference between the rate implemented and the higher of the rates finally approved or previously in effect. Provides that certain transactions involving a utility company may not occur without IURC approval if the transaction will cause at least 50% of the company's voting stock to be held by different interests. Allows the IURC to impose a civil penalty of up to \$5,000 if a public utility providing specified services or a rural electric membership corporation (REMC) violates any utility law or fails to comply with certain IURC rules or orders. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure demonstrates a disregard by the public utility or REMC of its duty to remedy the violation or failure. Provides that public utilities subject to any environmental law may submit voluntary environmental compliance plans to the IURC. Repeals references to the federal Clean Air Act in the provisions concerning environmental compliance plans.

Effective: Upon passage; July 1, 2003.

Stilwell

January 16, 2003, read first time and referred to Committee on Commerce and Economic Development.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1529

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-6.6, AS AMENDED BY P.L.159-2002,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6.6. (a) As used in this section, "clean coal
4 technology" means a technology (including precombustion treatment
5 of coal):

6 (1) that is used at a new or existing electric generating facility and
7 directly or indirectly reduces airborne emissions of sulfur, ~~or~~
8 **mercury, nitrogen based pollutants oxides, or other regulated**
9 **air emissions** associated with combustion or use of coal; and

10 (2) that either:

11 (A) is not in general commercial use at the same or greater
12 scale in new or existing facilities in the United States as of
13 January 1, 1989; or

14 (B) has been selected by the United States Department of
15 Energy for funding under its Innovative Clean Coal
16 Technology program and is finally approved for such funding
17 on or after January 1, 1989.



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1 "Indiana coal" means coal from a mine whose coal deposits are
 2 located in the ground wholly or partially in Indiana regardless of the
 3 location of the mine's tittle.

4 (b) As used in this section, "government mandated event" has
 5 the meaning set forth in section 6.9 of this chapter.

6 (c) As used in this section, "qualified pollution control property"
 7 means: ~~an~~

8 (1) any:

9 (A) air, wastewater, solid waste, or thermal pollution
 10 treatment, storage, or disposal system or pollution control
 11 device ~~on~~ that is necessary to operate a coal burning electric
 12 generating facility; or ~~any~~

13 (B) equipment that constitutes clean coal technology;
 14 that has been approved for use by the commission, that meets
 15 applicable state or federal requirements, and that is designed to
 16 accommodate the burning of coal from the geological formation
 17 known as the Illinois Basin; or

18 (2) any air, wastewater, solid waste, or thermal pollution
 19 treatment, storage, or disposal system, pollution control
 20 device, or monitoring device that:

21 (A) is used for any plant, equipment, or facility used or to
 22 be used for the production, transmission, delivery, or
 23 furnishing of heat, light, or power;

24 (B) is approved for use by the commission; and

25 (C) meets applicable state or federal requirements.

26 (d) As used in this section, "qualified property" means:

27 (1) qualified pollution control property; or

28 (2) qualified utility system property.

29 (e) As used in this section, "qualified utility system property"
 30 means any plant, equipment, or facility that is:

31 (1) used or to be used on a utility system; and

32 (2) required to meet state or federal requirements of any
 33 governmentally mandated event.

34 (f) As used in this section, "state or federal requirements"
 35 includes requirements of any state or federal law, rule, regulation,
 36 or order that is:

37 (1) in effect;

38 (2) applicable to a utility; and

39 (3) not stayed pending judicial appeal.

40 (g) As used in this section, "utility" refers to any electric generating
 41 an energy utility ~~allowed by law to earn a return on its investment. (as~~
 42 defined in IC 8-1-2.5-2).

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(h) As used in this section, "utility system" means a system that is used by a utility in whole or in part for:

- (1) the production;
- (2) the transmission;
- (3) the distribution; or
- (4) any combination of the production, transmission, or distribution;

of heat, light, or power to provide retail energy service (as defined in IC 8-1-2.5-3), regardless whether the service is provided under IC 8-1-2.5 or under another chapter of this article.

(b) (i) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified ~~pollution control~~ property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified ~~pollution control~~ property under construction. ~~but only if at the time of the application and thereafter:~~

- (1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or
- (2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some non-Indiana coal.

(c) (j) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 2. IC 8-1-2-6.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.9. (a) As used in this section, "government mandated costs" means capital, operating, maintenance, depreciation, or tax costs incurred by an energy utility after January 1, 2003, as a direct result of a government mandated event.

(b) As used in this section, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

(c) As used in this section, "governmental action" means a federal, state, or local rule, regulation, order, or statute.

(d) As used in this section, "government mandated event" means compliance by a utility with a governmental action that:

- (1) has a direct and material effect on the utility's operating expenses or capital costs; and
- (2) is, in effect, applicable to a utility, and is not stayed pending judicial appeal.

(e) As used in this section, "retail energy service" has the



meaning set forth in IC 8-1-2.5-3, regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

(f) As used in this section, "retail rate adjustment mechanism" means a:

- (1) tracking provision;
- (2) surcharge provision; or
- (3) similar mechanism or provision;

approved by the commission to periodically adjust an energy utility's rates and charges for retail energy service to allow for the recovery of certain costs.

(g) Upon the petition of an energy utility, the commission shall allow the energy utility to recover government mandated costs without any deferral or offset through a retail rate adjustment mechanism if the commission finds that the energy utility has demonstrated that the government mandated costs are a direct result of a government mandated event and are reasonable.

(h) Recovery of government mandated costs under this section does not preclude inclusion of the costs in an energy utility's basic rates and charges in subsequent rate proceedings. Any government mandated costs subsequently recovered in the energy utility's basic rates and charges may not also be recovered through the retail rate adjustment mechanism under this section.

(i) A retail rate adjustment mechanism proposed by an energy utility under this section may be based on actual or forecasted data. If forecasted data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct any variance between the energy utility's forecasted costs and the energy utility's actual costs in providing retail energy service. An energy utility may not petition the commission for a change in the retail rate adjustment mechanism more than once during any twelve (12) month period.

(j) A retail rate adjustment resulting from a retail rate adjustment mechanism approved by the commission under this section:

- (1) is in addition to any other rate adjustment a utility may be entitled to under this title; and
- (2) is not considered a general increase in basic rates and charges under section 42(a) of this chapter or IC 8-1-13-30(a).

(k) The commission shall make any adjustments to an energy utility's expense tests and return tests during the twelve (12) month test period considered by the commission in an application under section 42(d) or 42(g) of this chapter or IC 8-1-13-30(d), whichever

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applies, that are necessary to permit the energy utility to retain the revenues resulting from a retail rate adjustment mechanism approved by the commission under this section.

SECTION 3. IC 8-1-2-61 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 61. (a) Any public utility may make complaint as to any matter affecting its own rates or service. The petition or complaint must include a statement as to whether the utility, if a not-for-profit water utility or municipal utility, has any outstanding indebtedness to the federal government. The public utility shall publish a notice of the filing of such petition or complaint in a newspaper of general circulation published in any county in which the public utility renders service. An order affecting rates or service may be entered by the commission without a formal public hearing, if:

- (1) the utility is a not-for-profit water utility or a municipal utility; and
- (2) the utility has obtained written consent to obtain an order affecting its rates from the commission without a formal hearing from any agency of the federal government with which the utility has outstanding evidence of indebtedness to the federal government.

The commission may, however, on its own motion require a formal public hearing, and shall, upon a motion filed by the utility consumer counselor, by any public or municipal corporation, or by ten (10) individuals, firms, corporations, limited liability companies, or associations, or ten (10) complainants of all or any of these classes, hold a formal public hearing with respect to any such petition or complaint.

(b) In any general rate proceeding under subsection (a) which requires a public hearing and in which an increase in revenues is sought which exceeds the sum of two million five hundred thousand dollars (\$2,500,000), the commission shall conduct at least one (1) public hearing in the largest municipality located within such utility's service area.

(c) As used in this subsection, "public utility" includes a department of public utilities created under IC 8-1-11.1. If the commission fails to issue an order making a determination on a request by a public utility for an increase in the public utility's basic rates and charges for electric or gas service within nine (9) months after the filing of the public utility's case in chief, the public utility may implement the public utility's proposed rate changes beginning on the first day of the first billing month following the expiration of the nine (9) month period allowed the commission

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under this subsection. A public utility must file notice with the commission of the public utility's implementation of its proposed rate changes under this subsection. The commission may suspend the running of the nine (9) month period if the commission finds that:

- (1) the public utility did not file its case in chief in sufficient detail to allow the commission to begin a review of the request;
- (2) the public utility materially altered the public utility's case in chief after its filing;
- (3) a discovery order compelling production by the public utility has not been satisfied within the time provided in the order; or
- (4) the commission temporarily lacks jurisdiction over the proceeding due to the filing of an interlocutory judicial appeal of a commission ruling or order.

The suspension ends and the nine (9) month period continues to run as soon as the public utility cures the cause for suspension.

(d) If the commission issues an order making a determination on the public utility's request but does not make the determination within the period allowed under subsection (c), the public utility may continue, after the order is issued, to collect the rates implemented by the public utility under subsection (c) pending a petition for rehearing or an appeal of the commission's order under IC 8-1-3. If the commission does not make a timely determination under subsection (c), notwithstanding any other provision of this article, upon the final determination on the public utility's request, including the determination on any petition for rehearing or appeal under IC 8-1-3, the public utility shall refund any difference between:

- (1) the revenues generated by the rates implemented by the public utility under subsection (c); and
- (2) the revenues that would have been generated by the higher of:
 - (A) the rates authorized in the final determination on the public utility's request; or
 - (B) the rates of the public utility that were in effect immediately before the rates implemented by the public utility under subsection (c);

for the period beginning on the effective date of the rates implemented by the public utility under subsection (c) and ending on the effective date of the rates authorized in the final

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determination on the public utility's request. The public utility shall issue any refunds required under this subsection not later than sixty (60) days after the effective date of the rates authorized in the final determination on the proceedings. The refunds must include interest accrued from the date of the final determination at the interest rate set forth in IC 24-4.6-1-102.

(e) If the commission makes a timely determination under subsection (c) on a public utility's request, IC 8-1-3-6 governs the rates that the public utility may collect pending a petition for rehearing or an appeal of the commission's order.

SECTION 4. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 84.1. (a) Notwithstanding sections 83 and 84 of this chapter, this section applies to a transaction involving:

- (1) a merger, consolidation, reorganization, or union involving a utility company;
- (2) a tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of a utility company; or
- (3) any combination or series of transactions described in subdivisions (1) and (2) conducted within any three (3) year period.

(b) As used in this section, "utility" means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or court-appointed receivers that may own, operate, manage, or control any plant or equipment within Indiana for the:

- (1) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

(c) As used in this section, "utility company" means a utility or a utility holding company.

(d) As used in this section, "utility holding company" means a corporation, company, partnership, or limited liability company that owns a utility.

(e) Without the prior approval of the commission, a person may not, except in an intracorporate transaction, consummate a transaction described in subsection (a) that causes at least fifty percent (50%) of the then outstanding shares of the energy company's stock entitled to vote generally in the election of the energy company's directors to be beneficially held, directly or

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indirectly, immediately after the transaction by persons other than the persons that beneficially held, directly or indirectly, the shares of the energy company's stock immediately before the transaction.

(f) A utility company shall file an application with the commission seeking approval of a transaction subject to this section. In determining whether to approve a transaction subject to this section, the commission shall consider the following:

(1) The financial, technical, and managerial capacity of the new entity.

(2) The effect of the merger on the provision and cost of service to customers of the utility.

(g) The commission shall enter an order either approving or disapproving a transaction subject to this section not later than one hundred thirty-five (135) days after the date on which a utility files an application with the commission for approval of the proposed transaction. If the commission fails to issue an order within the one hundred thirty-five (135) day period allowed the commission under this subsection, the transaction shall be considered approved by operation of law as of the first day following the one hundred thirty-five (135) day period described in this subsection. If the transaction is approved by the commission or considered approved under this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction.

(h) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving a utility company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of a utility company;

is not required under this section, commission approval of the transaction is not required under any other provision of this title.

(i) This chapter does not:

(1) prevent the holding of a utility company's stock that is lawfully acquired before January 1, 2003; or

(2) prohibit a merger, consolidation, reorganization, or union involving a utility company if the transaction was lawfully initiated before January 1, 2003.

SECTION 5. IC 8-1-2-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 109. (a) This section does not apply to:

(1) a public utility that owns, operates, manages, or controls any plant or equipment within Indiana for the production,

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transmission, delivery, or furnishing of heat, light, water, or power;

(2) a public utility that owns, operates, manages, or controls any plant or equipment within Indiana for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or

(3) a corporation organized or operating under IC 8-1-13.

(b) A public utility that violates this chapter or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.

SECTION 6. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 109.1. (a) This section does not apply when a public utility's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the public utility, including any of the following causes:**

(1) Customer provided equipment.

(2) A negligent act or omission of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(b) As used in this section, "public utility" means any corporation, company, partnership, limited liability company, individual, or association of individuals, including lessees, trustees, or court-appointed receivers, that owns, operates, manages, or controls any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, water, or power or the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

(1) a municipality or political subdivision; or

(2) a corporation organized or operating under IC 8-1-13.

(c) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under the authority of this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has violated this chapter or failed after due notice to comply with:

(1) a standard of service established by commission rule; or

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1 (2) a rate or service requirement of a final and unappealable
 2 order of the commission;
 3 the commission may order the public utility to pay a civil penalty
 4 of not more than five thousand dollars (\$5,000) for each violation
 5 or failure to comply.

6 (e) Notwithstanding subsection (d), if the commission finds after
 7 notice and hearing that the public utility's violation or failure to
 8 comply demonstrates, by a continuing pattern of conduct, a
 9 disregard by the public utility of its obligation to remedy the
 10 violation or failure to comply found under subsection (d), the
 11 commission may impose an additional civil penalty of not more
 12 than ten thousand dollars (\$10,000) for each violation or failure to
 13 comply.

14 (f) The commission shall consider the following when
 15 determining the appropriateness of the imposition or amount of a
 16 civil penalty:

17 (1) The size of the public utility.

18 (2) The gravity of the violation or failure to comply.

19 (3) The good faith of the public utility in attempting to remedy
 20 the violation or failure to comply or attempting to achieve
 21 compliance after receiving notification of the violation or
 22 failure.

23 (4) The effect of the civil penalty on the public utility's
 24 financial ability to provide adequate and reliable service.

25 (5) If the public utility is a nonprofit company:

26 (A) the effect of the penalty on the company's members
 27 and its capitalization of the company; and

28 (B) whether the act or omission causing the violation or
 29 failure to comply had been approved or requested by the
 30 company's members.

31 In the order imposing the civil penalty, the commission shall make
 32 specific findings with respect to the factors described in
 33 subdivisions (1) through (5).

34 (g) A public utility may not be subject to both a civil penalty
 35 under this section and a penalty agreed to in a commission
 36 approved settlement agreement for the same violation or failure to
 37 comply. If the commission has approved a settlement agreement
 38 that includes penalties or remedies for noncompliance with specific
 39 provisions of the settlement agreement, the penalties provided in
 40 this section do not apply to those instances of noncompliance
 41 during the life of the settlement agreement.



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1 (h) Notwithstanding section 112 of this chapter, a public utility
 2 may not be subject to civil penalties under this section that exceed
 3 a total of six million dollars (\$6,000,000) for any twelve (12) month
 4 period.

5 (i) Civil penalties recovered under this section shall be paid into
 6 the state general fund.

7 (j) Upon the motion of a public utility, the commission shall stay
 8 the effect or enforceability of an order issued under this section
 9 pending an appeal if the public utility posts a bond that complies
 10 with Rule 18 of the Indiana Rules of Appellate Procedure.

11 SECTION 7. IC 8-1-2-115 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 115. The commission
 13 shall inquire into any neglect or violation of the statutes of this state or
 14 the ordinances of any city or town by any public utility doing business
 15 therein, or by the officers, agents, or employees thereof, or by any
 16 person operating the plant of any public utility, and shall have the
 17 power, and it shall be ~~its~~ **the commission's** duty to enforce the
 18 provisions of this chapter, as well as all other laws, relating to public
 19 utilities. Any forfeiture or penalty provided in this chapter shall be
 20 recovered, and suit therein shall be brought in the name of the state of
 21 Indiana ~~in the circuit or superior court where the public utility has its~~
 22 ~~principal place of business; by the attorney general.~~ Complaint for the
 23 collection of any such forfeiture may be made by the commission or
 24 any member thereof, and, when so made, the action so commenced
 25 shall be prosecuted by the **attorney** general. ~~counsel.~~

26 SECTION 8. IC 8-1-3-6 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE UPON PASSAGE]: Sec. 6. All rules, practices,
 28 installations, and services prescribed, approved, or required by the
 29 commission shall be in force and shall be prima facie reasonable unless
 30 finally found otherwise by the court of appeals or by the supreme court
 31 if the cause is transferred to and decided by that court. ~~However,~~
 32 **Except as otherwise allowed under IC 8-1-2-61(c),** pending the
 33 appeal as in this chapter provided, any municipally owned utility,
 34 public utility, rural electric membership corporation, or rural telephone
 35 cooperative association whose rate or rates are affected by the decision,
 36 ruling, or order appealed from shall have the right to collect the rate or
 37 rates as fixed by said decision, ruling, or order, or the former rate,
 38 whichever is higher in amount, and such municipally owned utility,
 39 public utility, corporation, or association shall refund the difference to
 40 each consumer or contract customer if such difference be not sustained
 41 upon appeal. However, pending the appeal as in this chapter provided,
 42 the court of appeals, upon good cause shown by verified petition, may

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1 authorize and permit, but not require, any common or contract carrier
 2 whose rate or rates are affected by the decision, ruling, or order
 3 appealed from, to collect the rate or rates published and in effect or the
 4 rate or rates sought to be put into effect, immediately prior to the
 5 commencement of the proceeding before the commission, subject to
 6 such provisions for bond or escrow as the court shall provide to protect
 7 the interest of all parties of record before the court.

8 SECTION 9. IC 8-1-3-7 IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Upon determination of
 10 the appeal, the court shall have jurisdiction to affirm or set aside such
 11 decision, ruling, or order of the commission, in whole or in part, or
 12 remand the proceeding to the commission with instructions. No
 13 evidence beyond that contained in the record of the proceedings before
 14 the commission shall be considered or received by the court, except
 15 that in cases where issues of confiscation or of constitutional right are
 16 involved, the court, on its own motion or verified petition of a party,
 17 may order such additional evidence as it deems necessary for the
 18 determination of such issues to be taken before the commission and to
 19 be received at the hearing before the commission in such manner and
 20 upon such terms and conditions as the court shall order.

21 (b) If a new hearing is ordered under subsection (a), the commission
 22 is not required to receive any evidence as to facts which were in
 23 existence at the time of the prior commission hearing or hearings,
 24 except upon a showing, either to the court in the first instance, or the
 25 commission, upon the hearing, that:

- 26 (1) the evidence was not available for presentation to the
- 27 commission prior to the entry of its final decision, ruling, or order,
- 28 or prior to the determination of the commission upon the petition
- 29 for rehearing, if a petition for rehearing was filed; and
- 30 (2) due diligence was exercised by the party offering the evidence
- 31 to procure and present the evidence to the commission prior to the
- 32 entry of its final decision, ruling, or order, or its determination
- 33 upon the petition for rehearing, if any was filed.

34 (c) Whenever the court shall order additional evidence to be taken
 35 the commission shall promptly hear and report the evidence to the
 36 court so that the proof may be brought as nearly as reasonably possible
 37 down to the date of its report to the court. The commission may, after
 38 hearing such evidence, modify its findings as to facts and its original
 39 decision, ruling, or order, and it shall file with the court the amended
 40 decision or orders and any modified or new findings.

41 (d) If the commission modifies or amends its original decision or
 42 orders, the appealing party or any other party aggrieved by the modified

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or amended decision or order may file with the court, within the time allowed by the court, a specification of any errors of law claimed to have been made by the commission in the modified decision or orders. A specification of errors shall be considered by the court in addition to the errors of law asserted in the assignment or assignments of error.

(e) The supreme court and the court of appeals, as the case may be, have jurisdiction, upon application of the commission or any party, to order or enjoin temporarily or permanently the enforcement of any determination, ruling, or order of the commission made in the cause.

(f) The supreme court and the court of appeals, as the case may be, also have jurisdiction upon application of a public utility to issue temporary injunctions protecting the utility in the collection of rates determined by the court to be nonconfiscatory during the pendency of the proceeding and until nonconfiscatory rates are fixed by the commission if existing rates are finally determined to be confiscatory, with appropriate provisions as to bonds and refunds. **A public utility that provides electric or gas service is not required to petition the court under this subsection in order to collect, during the pendency of the proceeding, the rates allowed under IC 8-1-2-61(d).**

SECTION 10. IC 8-1-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. Nothing in this chapter contained shall be construed to affect the duty or power of:

(1) the commission to commence ~~and prosecute~~ enforcement proceedings in its own name; or

(2) **the attorney general to prosecute enforcement proceedings** in the name of the state of Indiana in the circuit or superior courts of this state;

pursuant to the provisions of **IC 8-1-2-115, IC 8-1-13-41.2, or** other statutes, except insofar as such proceedings may interfere with the jurisdiction of the court of appeals or supreme court in a cause then pending on appeal.

SECTION 11. IC 8-1-13-41.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 41.2. The commission shall inquire into any neglect or violation of Indiana statutes or the ordinances of any city or town:**

(1) **by any corporation organized under this chapter and doing business in the state, city, or town, whichever applies;**

(2) **by the officers, agents, or employees of the corporation; or**

(3) **by any person operating the plant of any corporation;**

and the commission shall enforce this chapter, as well as all other laws, relating to corporations regulated under this chapter. Any

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1 forfeiture or penalty provided in this chapter shall be recovered
 2 and any suit related to the forfeiture or penalty shall be brought in
 3 the name of the state of Indiana by the attorney general in a court
 4 with jurisdiction. Complaint for the collection of any forfeiture or
 5 penalty may be made by the commission or any commission
 6 member and, when made, the action commenced shall be
 7 prosecuted by the attorney general.

8 SECTION 12. IC 8-1-27-3 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this
 10 chapter, "environmental compliance plan" means a plan developed by
 11 a public utility to comply in whole or in part with the requirements of
 12 the ~~Clean Air Act Amendments of 1990~~ state or federal
 13 environmental laws.

14 SECTION 13. IC 8-1-27-5.7 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: Sec. 5.7. As used in this chapter, "state or
 17 federal environmental laws" means:

18 (1) any state or federal law, rule, regulation, or order; or
 19 (2) any adjudication, settlement, or consent decree in any state
 20 or federal court or administrative proceeding interpreting or
 21 applying a state or federal law, rule, regulation, or order;
 22 relating to the protection, monitoring, preservation, remediation,
 23 or restoration of human health, the environment, or natural
 24 resources from air pollution, wastewater, solid waste, or thermal
 25 pollution.

26 SECTION 14. IC 8-1-27-6 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A public
 28 utility that has at least one (1) generating unit affected by ~~Section 404~~
 29 ~~(Phase I) or Section 405 (Phase II) of the Clean Air Act Amendments~~
 30 ~~of 1990~~ state or federal environmental laws may voluntarily submit
 31 to the commission for the commission's review and approval under
 32 this chapter a verified environmental compliance plan that sets forth
 33 the manner in which the public utility intends to comply with the
 34 requirements of the ~~Clean Air Act Amendments of 1990~~ to the
 35 commission for the commission's review and approval under this
 36 chapter. state or federal environmental laws addressed by the plan.

37 (b) An environmental compliance plan described in subsection (a)
 38 must include any information that the commission may reasonably
 39 require. The commission shall require a plan described in subsection
 40 (a) to include at least the following information:

41 (1) A description of the requirements of the ~~Clean Air Act~~
 42 ~~Amendments of 1990~~ state or federal environmental laws



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1 **addressed by the plan and** applicable to each **facility or**
 2 **generating unit owned or operated by the public utility.**

3 (2) A description of the measures the public utility proposes to
 4 implement to comply with the requirements.

5 (3) The schedule under which the public utility proposes to
 6 implement the measures.

7 (4) An estimate of the cost of implementing each of the measures
 8 proposed by the public utility.

9 (5) An analysis of the comparative estimated costs of meeting the
 10 applicable requirements of the ~~Clean Air Act Amendments of~~
 11 ~~1990~~ **state or federal environmental laws addressed by the**
 12 **plan** through the measures proposed by the public utility and
 13 other alternative compliance measures considered by the public
 14 utility.

15 (6) For all compliance plans submitted to the commission after
 16 July 1, 1993, if an environmental compliance plan proposes a
 17 change of fuel type from the fuel type consumed in the public
 18 utility's generating units and that change of fuel type would result
 19 in the displacement or diminished use of Indiana coal from the
 20 quantity of Indiana coal consumed by the public utility during the
 21 calendar year 1990, or an average of the quantity of Indiana coal
 22 consumed by the utility in calendar years 1990, 1991, and 1992,
 23 whichever is submitted by the utility in the plan, the public utility
 24 shall submit the following as part of the environmental
 25 compliance plan:

26 (A) An analysis of the following:

27 (i) The economic and employment effects of the proposed
 28 change of fuel type on the regions of Indiana in which the
 29 mining of coal provides employment, and on the service
 30 territory of the public utility.

31 (ii) The effects of the proposed modification on the
 32 preservation of the mining of Indiana coal as a viable source
 33 of fuel.

34 The analyses required under this clause must include a
 35 comparison of the effects likely to result from the alternative
 36 compliance measures identified under subdivision (5).

37 (B) Information describing the availability, the reliability, the
 38 current costs, and the projected future costs of the fuel type
 39 proposed for use in connection with the environmental
 40 compliance plan.

41 SECTION 15. IC 8-1-27-8 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The commission

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shall issue an order approving an environmental compliance plan if the commission:

(1) finds that the environmental compliance plan:

(A) is reasonably designed to meet or exceed the applicable requirements of the ~~Clean Air Act Amendments of 1990~~; **state or federal environmental laws addressed by the plan**;

(B) constitutes a reasonable and least cost strategy over the life of the investment consistent with providing reliable, efficient, and economical electrical service; **and**

(C) is in the public interest; and

~~(D) either:~~

(i) ~~provides for continued or increased use of Indiana coal in the coal-consuming electric generating units owned or operated by the public utility and affected by the Clean Air Act Amendments of 1990; or~~

(ii) ~~if the plan does not provide for continued or increased use of Indiana coal, such nonprovision is justified by economic~~

~~considerations including the effects in the regions of Indiana in which the mining of coal provides employment and in the service territory of the public utility; and~~

(2) approves the cost and schedule estimate for developing and implementing the environmental compliance plan.

SECTION 16. IC 8-1-27-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. If a public utility:

(1) chooses to; or

(2) because of action by a federal or state government environmental agency, is required to;

modify a part of an environmental compliance plan that has previously been approved by the commission to comply with the requirements of the ~~Clean Air Act~~, **state or federal environmental laws addressed by the plan**, the public utility shall submit a modified environmental compliance plan to the commission for the commission's review. The conflict provisions of section 10 of this chapter apply to a modified environmental compliance plan submitted under this section.

SECTION 17. IC 8-1-27-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. If the commission finds that an environmental compliance plan or a modified environmental compliance plan approved by the commission under this chapter exceeds the applicable requirements of the ~~Clean Air Act Amendments of 1990~~ **state or federal environmental laws addressed**

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1 **by the plan** by means of early or over compliance, the commission
2 shall, in the order approving the plan, determine the manner and timing
3 of the applicable ratemaking and regulatory treatment of any emission
4 credits or other additional benefits expected to result from the early or
5 over compliance.

6 SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE
7 UPON PASSAGE]: IC 8-1-27-1; IC 8-1-27-2.

8 SECTION 19. **An emergency is declared for this act.**

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